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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/615,363	07/13/2000	Eric A. Bunn	A-68295/MAK/LM	3752
30636	7590	06/24/2005	EXAMINER	
FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038			FADOK, MARK A	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/615,363

**Applicant(s)**

BUNN ET AL.

**Examiner**

Mark Fadok

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2005 and 31 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-17 and 21-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-17 and 21-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The examiner is in receipt of response to office actions mailed 7/27/2004 and 1/6/2004, which were received 12/9/2004 and 3/31/2005 respectively. The examiner agrees with the applicant's reasoning in the 3/31/2005 response and will address the response dated 12/9/2004. Acknowledgement is made to the amendment to claims 12,17, and 29-33 cancellation of claims 18-20, and 34-35, leaving claims 12-17 and 21-33 as pending in the instant application. The applicant's arguments and amendment have overcome the rejection under USC 101, thus obviating that rejection. However, the arguments and amendments were not convincing in overcoming the rejection on the merits, therefore the previous rejection dated 7/27/2004 is restated below:

### ***Examiner's Note***

Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-15, 17, 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Burke (U.S. Patent No. 5,848,399).

Claims 12, 17: Burke teaches:

- a processor unit (Abstract);
- memory, coupled to said processor unit, storing an approximation of an image of said product (Abstract; col. 2 lines 45-59);
- a visual sub-system, functionally coupled to said memory and defining a three-dimensional display area, that simulates said image for said user such that a three-dimensional visual representation of said product appears in said display space (Abstract);
- a monitor, functionally coupled to said processor unit, to display for viewing by said user a selection including each said product (col. 6 lines 23-50);and
- a sales unit, coupled to said processor unit, enabling said user to purchase said product (col. 6 lines 41-50).

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Claim 13. Burke teaches said memory is network-coupled via said system (col. 5 lines 35-45).

Claim 14: Burke teaches said memory is coupled to said system via an Internet link (col. 5 lines 35-37), as encompassed by the teaching of *This shopping service 65 may be supported by a cable television system, telephone system or other computer network.*

Claim 15: Burke teaches simulation of at least one further characteristic for said product chosen from the group of characteristics consisting of sound, texture, mass, smell, temperature, and vibration, is provided said user (col. 7 lines 28-48).

Claim 27: Burke teaches said visual subsystem comprises a dome defining said three-dimensional display area (Abstract), in the teaching of *A three-dimensional modeling and display system which takes size and location information from the retail space management system and generates three-dimensional models of each shelf and product and accesses the product database using the codes provided by the retail space management system to obtain images for each product. It generates a display of each product on each shelf by combining the obtained images and the generated three-dimensional models. The consumer may manipulate the display to change what is being viewed, to examine product packages and to purchase products.*

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

references as applied to the claims below for the convenience of the applicant.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burke (U.S. Patent No. 5,848,399) as applied to claim 1 above, and further in view of Reisman (U.S. Patent No. 6,658,464).

Claim 16: Burke does not explicitly teach simulation of at least two further characteristics for said product are provided said user. However, Reisman teaches *A Web browser is an application running at the user's station which can access search engines, find and retrieve Web pages using URLs, and assemble the retrieved elements of text, graphics, sound and video, if present, into a coherent printable document or playable presentation (col. 35 lines 29-33)*. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the teaching of Burke to explicitly teach simulation of at least two further characteristics for said product are provided said user, as taught by Reisman, for the motivation of presenting a virtual representation of a product for purchase by a user that portrays a user's desired characteristics to encourage its purchase.

Claims 21-26 and 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burke as applied to claims 12 and 17 above, and further in view of Reisman and Nagamitsu (U.S. Patent No. 5,590,062).

Claims 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33: Burke teaches said memory stores an approximation of a texture, and a simulation subsystem functionally coupled to said memory that simulates said texture for said user (col. 8 lines 25-39). Burke does not explicitly teach said memory stores an approximation of a sound, a smell, a mass, a temperature, or a vibration of said product, nor a simulation subsystem functionally coupled to said memory that simulates said sound, smell, mass, temperature, or vibration for said user. However, these aspects are taught in the prior art, for example: - Reisman teaches *A Web browser is an application running at the user's station which can access search engines, find and retrieve Web pages using URLs, and assemble the retrieved elements of text, graphics, sound and video, if present, into a coherent printable document or playable presentation (col. 35 lines 29-33).*

- Nagamitsu teaches *a computer technology which has rapidly advanced in recent years has been adopted to perform an evaluation on 3-D (three-dimensional) living environments by producing virtual living environments. This enables a quick, inexpensive evaluation on the air-conditioning, lighting, sound, etc. This is so-called a computer simulation. Moreover, the simulator enables one to easily experience a simulation in a realistic way by producing a virtual space called a virtual reality using the simulation result. Thus, a massive amount of analysis data necessary*

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*at the time of planning can be collected efficiently. The simulation is considered to be used to a proposed-type sales technique; and users such as customers (residents-tobe) or a sales man experience a simulation of housing environments prior to construction. (col. 1 lines 43-57)*

These teachings encompasses applicant's claimed aspects of said memory stores an approximation of a sound, a smell, a mass, a temperature, or a vibration of said product, and a simulation subsystem functionally coupled to said memory that simulates said sound, smell, mass, temperature, or vibration for said user. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the teaching of Burke to explicitly teach said memory stores an approximation of a sound, a smell, a mass, a temperature, or a vibration of said product, and a simulation subsystem functionally coupled to said memory that simulates said sound, smell, mass, temperature, or vibration for said user, as taught by Reisman and Nagamitsu, for the motivation of providing the user/customer products for purchase in a manner that user can realistically perceive the product as if it were in front of the user/customer and influence the user's/customer's purchase.

### ***Response to Arguments***

Applicant's arguments filed 12/9/2004 regarding the USC 102 and 103 rejection have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies



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(i.e., the specific three dimensional display area that is defined in the specification and the rotation capability of the displayed item) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that a television is not a three-dimensional display area and thus Burke does not teach "a three-dimensional display area, that simulates said image for said user such that a three dimensional visual representation of said product appears in the display area". The examiner notes that Burke produces a three-dimensional display area in the shelves and produces a three dimensional image (see additionally figure 11). The examiner agrees that the television itself is not the display area but rather the display area is defined within the 3 dimensional viewing environment created within the television monitor.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-**

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**6755.** The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(571) 272-7159**.

***Alexandria, Va. 22313-1450***

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is **(571) 272-3600**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

or faxed to:

**(703) 872-9306** [Official communications; including

After Final communications labeled

"Box AF"]

**(571) 273-6755** [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]



Mark Fadok

Primary Examiner